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4 **KIBBY ROAD, LLC,**  
5 Plaintiff,  
6  
7 v.  
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9 **NORTHERN TRUST COMPANY,**  
10 Defendant.

11 Case No. 15-cv-00795-YGR

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15 **ORDER REQUIRING SUPPLEMENTAL  
BRIEFING AND CONTINUING HEARING**

16 Re: Dkt. No. 8

17 The Court has considered the papers submitted in connection with the defendant's motion  
18 to dismiss. (Dkt. No. 8.) Having reviewed the arguments and authorities presented, the Court  
19 hereby **ORDERS** the parties to provide supplemental briefs (including relevant legal authority) on  
20 the following issues:

21 1. Whether the parties agree that in the context of this case, where the defendant was  
22 the beneficiary as to both liens in question, the defendant could *unilaterally* modify  
23 the respective priorities of those liens?  
24 a. If so, what were the proper mechanisms for doing so in the absence of a  
25 relevant third party to serve as counterparty to a subordination agreement?  
26 2. Assuming for the sake of argument that the line of credit lien (and/or modifications  
27 thereto) was junior to the foreclosed lien at the time of initial recordation (or that  
28 the two liens had simultaneous priority):  
29 a. Did the defendant's April 1, 2014 notice of default (Dkt. No. 9-1 at 17)  
30 and/or December 31, 2014 notice of sale (Dkt. No. 9-1 at 24)—stating the  
31 line of credit lien was senior to the foreclosed lien—serve to (1) effectively  
32 modify the priority of the liens in the manner described above in Section  
33 1(a), and (2) provide adequate notice thereof to plaintiff?

United States District Court  
Northern District of California

- i. If so, did the change in priority encompass the two recorded modifications to the line of credit lien even if those modifications were not specifically referenced in the notice of default and/or notice of sale?
3. As to plaintiffs' asserted causes of action, address the following issues:
  - a. A claim for "equitable subordination" is alleged. Is this cause of action appropriate under California law, or was a claim for "equitable subrogation" intended? The Court notes that the former is typically found in the bankruptcy context. If "equitable subordination" is the intended cause of action, is it merely a remedy or a standalone cause of action?
  - b. Whether "wrongful conduct" is in fact a necessary element in an action to quiet title. (The Court notes the defendant has cited a single case which addresses this issue in one sentence, but lacks any substantive discussion.)
    - i. If it is, whether a complaint alleging a defendant is wrongly asserting a lien that was extinguished by virtue of the foreclosure of a senior lien has pled sufficient wrongful conduct to state a claim.
  - c. Whether "Cancellation of Deed of Trust" pursuant to California Civil Code § 3412 is a standalone cause of action or merely a remedy in an action to quiet title or for declaratory relief such that the claim would be redundant.

Each party's supplemental brief shall not exceed **seven (7)** pages and shall be filed by

**April 22, 2015.** The hearing set for April 21, 2015 is **CONTINUED** to **April 28, 2015** at 2 p.m.

## **IT IS SO ORDERED.**

Dated: April 17, 2015

*Yvonne Gonzalez Rogers*  
**YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT COURT JUDGE**